

Notice of Allowability

Application No.

10/598,150

Examiner

David N. Spector

Applicant(s)

SACHDEV ET AL.

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to application filed 18 August 2006.
2. ☒ The allowed claim(s) is/are 24-28 and 30.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>0307/20070320</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

Examiner's Amendment

An examiner's amendment to the record appears below which cancels claim 29 in its entirety, and further, which refines/clarifies the recitation of features/limitations currently extant in claims 24-28 and 30 of the instant application. Authorization for this examiner's amendment was given in a telephone interview with applicant's attorney, Michael D. Kaminski, on January 18, 2008. Should the changes and/or additions be unacceptable to applicant, a amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. Accordingly,

Amendments to the Claims The following listing of claims will replace all prior versions, and listings, of claims in the application:

Claims 1-23 (CANCELED)

24. A portable ovulation testing apparatus comprising: an inner casing having top and bottom ends; a controllable illuminating assembly comprising an LED masked with a diaphragm disposed at the bottom end of the inner casing, the assembly being covered at the bottom by a base plate; and a sealed fixed focused eyepiece assembly removeably disposed at the top end of the inner casing, wherein said eyepiece assembly is used for magnified viewing of a biological specimen, and wherein said assembly further comprises of a bottom portion for receiving the biological specimen, and top portion for viewing the biological specimen.
25. The portable ovulation testing apparatus as claimed in claim 24, wherein the fixed focus sealed eyepiece assembly comprises of a combination of a plano-convex eye lens on top, and a substantially thicker plano-convex field lens at the bottom; the convex

surfaces of the eye lens and field lens being inwardly disposed and facing each other with their respective plano surfaces outwardly disposed; and wherein the plano surface of the field lens is coincident with the focal plane of the eyepiece assembly in an arrangement wherein the plano surface of the field lens provides an object surface upon which the biological specimen is disposed.

26. The portable ovulation testing apparatus as claimed in claim 24, wherein the diameter of the diaphragm is selected to provide the necessary depth of focus to the eyepiece so as to accommodate users with normal vision, as well as those with long/short sighted vision of up to plus/minus 4 diopters.
27. The portable ovulation testing apparatus as claimed in claim 25, wherein the plano-convex field lens is made of glass.
28. The portable ovulation testing apparatus as claimed in claim 25, wherein the plano-convex field lens is made of plastic and is attached to a polished plano-plano glass plate using transparent optical cement, to resist deviation/warping of the plastic lens, and offering a hard exterior glass surface upon which the biological specimen is disposed, and to enable repeated cleaning.
29. CANCELED.
30. The portable ovulation testing apparatus as claimed in claim 24, wherein the fixed focus eyepiece includes a lens holder with means for maintaining the separation of the lenses sealed therein to form the fixed focus eyepiece assembly.

Reasons for Allowance

Claims 24-28 and 30 are allowed, as amended above. All pending claims thus being allowable, prosecution on the merits is closed in this application.

The following is an EXAMINER'S STATEMENT OF REASONS FOR ALLOWANCE: the prior art taken either singly or in combination fails to anticipate or fairly suggest the features/limitations of applicant's sole independent claim, in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper. More specifically, in regard to independent claim 24, the prior art taken either singly or in combination fails to anticipate or fairly suggest a portable ovulation testing apparatus comprising, *inter alia*, an inner casing having top and bottom ends, a controllable illuminating assembly, and a "sealed fixed focused eyepiece assembly removeably disposed at the top end of the inner casing" (Claim 24, Lines 4-5) and "wherein said assembly further comprises of a bottom portion for receiving the biological specimen" (Claim 24, Lines 6-7) taken together in combination with the totality of particular features/limitations recited therein.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be labeled "Comments on Statement of Reasons for Allowance."

Objections - Drawings

THE DRAWINGS ARE OBJECTED TO. Figures 1, 2, 3 and include black and white photographs which are not of sufficient quality so that all details in the photographs are reproducible in the printed patent. Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. In this case the subject matter of the application admits of illustration by a drawing. Clear readable drawings are required in place of the above-noted photographs.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Other Information/Remarks

The International Search Report (PCT/ISA/210) and the International Preliminary Report on Patentability (PCT/IPEA/409) prepared by the European Patent Office on 11/19/2004 and 03/07/2005, respectively, for the parent application (PCT/IB2004/000461) for the instant National Stage application. All of the documents and other material cited in the PCT/ISA/210 and PCT/IPEA/409 have been considered by the examiner in the prosecution of the instant application.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuo (U.S. Patent No. 6,960,170 B2); Weissmahr (U.S. Patent No. 6,793,886 B1); Weidemann (U.S. Patent No. 5,267,087 A); Ortueta Corona (U.S. Patent No. 4,815,835 A); Manua de Chveca (U.S. Patent No. 3,582,181 A) disclose a wide range of compact portable ovulation testing devices.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

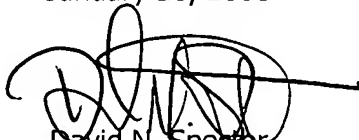
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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any other inquiry concerning this communication or earlier communications from the examiner should be directed to David N. Spector whose telephone number is (571) 272-2338. The examiner can normally be reached at this number Monday through Friday between 6:00 AM and 2:30 PM. The Official FAX number for the United States Patent and Trademark Office is (571) 273-8300.

January 20, 2008

A handwritten signature in black ink, appearing to read 'D. N. Spector', with a long horizontal stroke extending to the right.

David N. Spector
Primary Examiner
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